IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

| BENJAMIN JOHN BROKAW, |) | |
|-------------------------------|---|-------------------------------|
| Plaintiff, |) | |
| v. |) | Case No. 3:18-cv-1154-SMY-RJD |
| ERICH TUCKER and DAVE HUNTER, |) | |
| Defendants. |) | |

ORDER

DALY, Magistrate Judge:

This matter is before the Court on Defendants' Motion to Set Aside Default Judgment (Doc. 30) and Motion for Leave to File Instanter (Doc. 32). For the reasons set forth below, the Motions are **GRANTED**.

Plaintiff, an inmate in the custody of the Illinois Department of Corrections ("IDOC"), filed this lawsuit pursuant to 42 U.S.C. § 1983 alleging his constitutional rights were violated while he was incarcerated at Chester Mental Health Center ("Chester"). Plaintiff is proceeding on an Eighth Amendment excessive force claim against Defendants Tucker and Hunter related to an alleged beating that occurred in spring or early summer 2017.

Requests for waivers of service were sent to Defendants on July 13, 2018 (Docs. 12 and 13). Second requests for waivers of service were sent to Defendants on September 12, 2018 (Doc. 14). The waivers were not returned and, on December 4, 2018, summons were issued to Defendants (Doc. 17). The summonses were returned executed by Tucker and Hunter on December 11, 2018, and their answers were due December 27, 2018 (Docs. 18 and 19). No answers were filed. Plaintiff moved for default judgment in March 2019 (Docs. 22 and 23). The

Court granted Plaintiff's request in part, directing the clerk to enter default against Defendants and noting that default judgment may not enter until there is a clerk's entry of default (Doc. 24).

A clerk's entry of default was entered against Defendants on May 15, 2019 (Doc. 25). On June 19, 2019, Defendants filed a motion to set aside default judgment (Doc. 30). In their motion, Defendants explain that due to a delay in receiving a request for representation resulting from a clerical error, and through no fault of Defendants, representation was not assigned and a timely answer was not filed. Defendants indicate that counsel was assigned on June 9, 2019. Although captioned as a motion to set aside default judgment, the Court construes Defendants' request as a motion to set aside the clerk's entry of default as default judgment has not been entered against them. On August 7, 2019, Defendants filed a motion for leave to file their answer and affirmative defenses instanter (Doc. 32).

Federal Rule of Civil Procedure 55(c) provides that the court may set aside an entry of default for good cause. The Seventh Circuit has remarked that in order to vacate an entry of default, the moving party must show: "(1) good cause for the default; (2) quick action to correct it; and (3) a meritorious defense to the complaint." *Cracco v. Vitran Express., Inc.*, 559 F.3d 625, 630-31 (7th Cir. 2009) (internal quotations omitted).

Here, the Court finds that Defendants have shown good cause for their default. Defendants explain that their failure to file an answer was due to a clerical error concerning their request for representation, rather than their own failure to actively litigate this case. Defendants have also acted quickly in seeking to correct their mistake, filing a motion for extension of time to answer along with their motion to set aside default, as well as filing a motion for leave to file their answer instanter. Finally, the Court finds that denying Defendants' motion to vacate the entry of default would undermine the notion that cases should be decided on the merits.

For these reasons, Defendants' motion to set aside default judgment (construed as a motion

to set aside the Clerk's entry of default) (Doc. 30) and Defendants' motion for leave to file instanter

(Doc. 32) is **GRANTED**. Defendants are **ORDERED** to file their answer to Plaintiff's complaint

by August 23, 2019. In light of this Order, Plaintiff's motion for default judgment (Doc. 31) is

DENIED AS MOOT.

IT IS SO ORDERED.

DATED: August 21, 2019

s/ Reona J. Daly

Hon. Reona J. Daly

United States Magistrate Judge

Page 3 of 3